

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ZACKERY CRABTREE,

Plaintiff

v.

MICHAEL VIETA KABELL,

Defendants

Case No.: 3:19-cv-00756-MMD-WGC

**Report & Recommendation of
United States Magistrate Judge**

This Report and Recommendation is made to the Honorable Miranda M. Du, Chief United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

On December 19, 2019, Plaintiff, who is incarcerated within the Nevada Department of Corrections (NDOC), filed a "Notice of Intent 42 U.S.C. § 1983 Civil Rights Complaint." (ECF No. 1-1.) It was not accompanied by an application to proceed in forma pauperis (IFP) for a prisoner, or the filing fee (though he did later file a financial certificate). On January 17, 2020, Plaintiff then filed a complaint against Jason L. Earnest. (ECF No. 3.) On January 21, 2020, Plaintiff filed an amended complaint against Michael Vieta Kabell. (ECF No. 4.) Plaintiff alleges that Deputy District Attorney Kabell entered into a conspiracy with the judge and defense counsel to trick Plaintiff into entering into a substantial assistance agreement.

Plaintiff had previously filed a duplicative complaint against Kabell, case 3:19-cv-00750-MMD-WGC. "Plaintiffs generally have no right to maintain two separate actions involving the same subject matter at the same time in the same court and against the same defendant." *Adams v. Cal. Dep't of Health Servs.*, 487 F.3d 684, 688 (9th Cir. 2007), *overruled on other grounds by*

1 *Taylor v. Sturgell*, 553 U.S. 880 (2008). Here, Plaintiff asserts in this case the same claims against
2 the same defendant based on the same subject matter as his prior case. Therefore, this action should
3 be dismissed with prejudice.

4 **RECOMMENDATION**

5 **IT IS HEREBY RECOMMENDED** that the District Judge enter an order **DISMISSING**
6 **THIS ACTION WITH PREJUDICE** as duplicative of 3:19-cv-00750-MMD-WGC.

7 The Plaintiff should be aware of the following:

8 1. That he may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to
9 this Report and Recommendation within fourteen days of being served with a copy of the Report
10 and Recommendation. These objections should be titled “Objections to Magistrate Judge’s Report
11 and Recommendation” and should be accompanied by points and authorities for consideration by
12 the district judge.

13 2. That this Report and Recommendation is not an appealable order and that any notice of
14 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed
15 until entry of judgment by the district court.

16 Dated: March 17, 2020.

17 *William G. Cobb*

18 William G. Cobb
19 United States Magistrate Judge
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